

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
June 24, 2003**

PLACE: Auditorium
Town Hall

TIME: 8:00 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Spain, Forman, Kenny, Bigelow

STAFF ATTENDING: Ginsberg, Keating

Chairman Damanti read the following agenda item:

PUBLIC HEARING

Continuation of Public Hearing Regarding Flood Damage Prevention Application #193, Anthony & Cynthia Lazzara, 184 Nearwater Lane. Proposing to raze the existing residence, construct a new residence, and perform related site development activities within a regulated area. The subject property is located on the east side of Nearwater Lane approximately 325 feet south of its intersection with Shipway Road, and is shown on Tax Assessor's Map #55 as Lot #5, in the R-1 Zone.

Attorney Wilder Gleason represented the applicant and explained that the Zoning Board of Appeals had granted a variance of the front yard setback requirement. The applicant had requested that the building be 22.5' from the front property line, but the Zoning Board of Appeals approved that the variance with the stipulation that the proposed house be moved back to be 30' from the front property line. They have applied to the Zoning Board of Appeals for a new variance because moving the building towards the rear property line will require a rear yard variance as well as a front yard variance. Attorney Gleason showed the Commission the revised plans dated 6/20/2003 that illustrate the proposed relocation of the building in accordance with the ZBA variance.

Attorney Gleason said that the proposed building is in a Flood Hazard Zone and will be designed to comply with all flood damage prevention regulations. The lowest floor is elevated to be at least one foot above the expected flood level. The preliminary engineering for the foundation has been completed and the final engineering will be provided with the Building Permit application.

Attorney Gleason said that the revised floor plans differ from what the Commission had previously reviewed because they have incorporated the changes necessitated by the ZBA modification. In particular, on the second floor on the south end of the proposed building that area had been proposed as a screened porch. It has now been converted to a glassed-in enclosed area.

Attorney Gleason said that the slight shifting of the building necessitates some additional fill in the rear yard. This is to accommodate the large terrace area at the back of the house. The area underneath the terrace will serve as a large dry well. It will contain a layer of trap rock at least 24" deep. The roof gutters and leaders from the house will be directed into this terrace/dry well. Drainage from the driveway will be directed toward the street and there will be no storm water drainage directed toward any neighboring properties. Some storm water runoff is presently directed toward the rear yard and that will remain the same. In no case will surface water be directed toward the neighbors.

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There were no comments from the public regarding the application.

The Commission members noted that the second application before the Zoning Board of Appeals was still pending and it would not be appropriate to close the Public Hearing until a final decision has been made by the ZBA. The following motion was made: That the Commission continue the Public Hearing regarding this matter on July 8, 2003. The motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

Chairman Damanti read the following agenda item:

Proposed Correction/Readoption of Town Zoning Map, Five Mile River Road/Old Farm Road area. Effective July 25, 1999, the Darien Planning and Zoning Commission adopted a new Zoning Map generated by the Town's Geographic Information System (GIS). The intent of that map was to re-adopt the Zoning Map that was in effect at the time, with the only change being the deletion of the Planned Retail Business Zone. Recently, one minor error was discovered in that GIS-generated map, the zone line extending south from Tokeneke Road to just beyond Old Farm Road, to the south and west of Five Mile River Road. This zone line is the boundary between the R-1/2 Zone and the R-1 Zone. The error extended the R-1 Zone too far to the east. This affects about seven lots on Tax Assessor's Map #66. This application proposes to readopt the corrected GIS map and restore the zone boundary to match its longtime location.

Director of Planning Jeremy Ginsberg explained that in 1999, the Planning and Zoning Commission adopted a computer-generated Zoning Map that had utilized the Geographic Information System (GIS) to create the lines on the map. The Zoning Map was generated using the computer system to replace the hand-drafted zoning maps of the past. The Commission intended to adopt all the zone boundary lines in exactly the same positions with the exception of the elimination of the Planned Business (PB) Zone, which was converted to the Central Business District (CBD) Zone. He distributed to Commission members copies of portions of older zoning maps showing the Five Mile River Road and Old Farm Road area. Full size copies of the maps were on a display board. He also distributed copies of 1966 minutes of the Planning and Zoning Commission meetings regarding zone boundary changes and a portion of the 1984 Town Plan of Development regarding zone boundaries.

Mr. Ginsberg showed the Commission two maps. Each map shows the existing zone boundary line as depicted on the Zoning Map and the proposed relocation of the zone boundary. One map shows the zone line being relocated to correspond with the property lines on the west side of Old Farm Road. The other map shows the relocation of the zone boundary line to be parallel to and 300' away from the westerly edge of the right-of-way of Old Farm Road. Mr. Ginsberg also showed the Commission members enlarged copies of the 1995 Zoning Map. This was the most recent zoning map prior to the 1999 computer-generated Zoning Map.

Mr. Spain said that the 1966 minutes try to clarify some situations and the Commission at that time hoped to avoid confusion, but apparently did not clarify the Old Farm Road/Five Mile River Road situation.

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John Gardner of 45 R Old Farm Road said that his property is accessed via a lane that is located to the west of the zone line in question. He said that this matter came to the attention of the neighbors due to the proposed swimming pool on the Hooper property. He said that the lane serves three houses and the change of zone would allow the pool to be much closer to the property line and would therefore have a much greater impact on the lane and the property owners who use the lane. He said that other parts of the Hooper property are in the R-1 Zone, and that if the Commission wants to correct the map, they should use the 300' setback from the street right-of-way, not the lot line as the proper location for the zone boundary. He said that in the past, the house was enlarged considerably, and at the time, they needed to comply with the R-1 zoning requirements. He said that the previous zoning maps and the previous survey maps of the property show the zone line as being 300' from Old Farm Road, not on the property line.

Barbara Gardner of 45 R Old Farm Road said that although the difference between setting the zone line at the property line and setting it 300' from Old Farm Road is a small amount of land, it would have a substantial impact on three properties that use the private lane. She said that the Hooper residence was formally part of a 7 acre estate, and that it was zoned for that purpose so that the lane could not be encroached upon. She said that the zone line should be parallel to and 300' from the westerly right-of-way line of Old Farm Road.

Mr. Ginsberg said that the 300' dimension comes from previous Zoning Maps since 1966. He said that these maps show a 300' dimension west of Five Mile River Road and 300' south of other portions of Five Mile River Road, but they do not give any dimension from Old Farm Road to the zone boundary line.

Surveyor Jeffrey McDougal of William W. Seymour & Associates showed the Commission a blown up portion of the 1996 Zoning Map. He said that when the map is enlarged to 1 inch equals 100' scale, the zone boundary line is now so thick that it represents about a 20' wide swath of land. He showed the Commission that the zone boundary line was, in his opinion, on the property line, not indented into the property and not 300' away from the street right-of-way. Mr. Damanti said the 1966 minutes of then-Chairman Brady indicated that if the zone line was very close to the lot line, the zone line would be the lot line.

Attorney Wilder Gleason said that the computer-generated map that has been adopted by the Planning and Zoning Commission actually changed the old configuration of the zone lines. He said that the zone boundary line should track the property line wherever possible. In response to questions, Assistant Director David Keating said that the old Zoning Maps were made on Mylar and drafting tape was placed on top of the Mylar. The drafting tape had a width to it so that it could be clearly distinguished from other lines on the map. Jeffrey McDougal said that the zone line was very bold and was along the right-of-way of the lane, not to the east of the lane (which would be the case if it were supposed to be 300' from the right of way of Old Farm Road).

Mr. Spain said that it is uncontested that the computer-generated map is wrong because it shifted the zone boundary line too far to the east. Now the Commission is trying to correct the map so that it accurately reflects the old Zoning Maps depicted. In response to a question, Mr. Ginsberg said that the map showing the zone line 300' to the west of Old Farm Road was done at the request of Mrs. Gardner. Mr. Damanti said that using the 300' distance from the west side of the Old Farm Road street right-of-way is consistent with the rest of the size of the R-1/2 Zone, but

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nowhere on the old map does it give a dimension from Old Farm Road to the zone boundary line.

Mr. Ginsberg said that the proposal was referred to Norwalk and to the Southwestern Regional Planning Agency. No comment was received from either group. Mrs. Gardner said that the 300' zone line map would not make any significant difference to No.18 or No. 47 Old Farm Road, but at No. 51 Old Farm Road there is a significant difference.

Attorney Gleason said that the Commission should just put the GIS map line back to where the old zoning map line was and that would be to have the zone boundary line on the property line. There being no further comments, the following motion was made: That the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Bigelow, seconded by Mr. Kenny and unanimously approved.

Chairman Damanti read the following agenda item:

Coastal Site Plan Review #163-B, Flood Damage Prevention Application #170-B, Land Filling and Regrading Application #58-B, T. Mark & Margaret Maybell, 23 Tokeneke Trail. Proposing construction of a new terrace on the east edge of the site to serve as a landing for a new floating dock; construction of a new gangway and float; installation of planting beds, regrading an existing slope and placement of cobble risers to create terraces on the slope; and perform related site development activities within regulated areas. The subject property is located on the south side of Tokeneke Trail approximately 1500 feet southwest of its intersection with Runkenhage Road, and is shown on Tax Assessor's Map #69 as Lot #38, R-1 Zone.

McKee Patterson of Austin Patterson Architects discussed the application with the Commission. It was noted that the Zoning Board of Appeals will soon be considering an application to modify the existing garage structure on the property. There was no need for the applicant to apply to ZBA for Coastal Area Management issues related to the proposed site work near the shore line. That is the subject of the Planning and Zoning Commission application.

Eric Croft, Landscape Architect, explained that the plan involves installing a number of planting beds along the sea wall. At present, 90% of the edge of the sea wall is lawn area and some weed areas. They plan to change this and reduce the amount of lawn to approximately 55' of lawn edge adjacent to the sea wall. He said that they are working with the existing rock ledge outcrops and developing a set of stairs from house level down towards the water's edge.

Mr. Kenny noted that Mr. Croft's stamp on the plans indicates that he is a Landscape Architect from out-of- state. In response to a question, Mr. Croft said that he is not licensed in Connecticut as a Landscape Architect.

In response to other questions, Mr. Croft said that the plans had been designed to catch and filter as much of the storm water runoff from the house and developed areas as possible before that water can run into Scott's Cove. He said that they are working with the existing topographic conditions and the plant selection includes salt tolerant plants.

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John Roberge, Professional Engineer, said that he was involved in the design and permitting of the floating dock structure. He said that Connecticut Department of Environmental Protection approval was obtained for the repair of the sea wall last year and the application for the dock is currently pending with the DEP. Mr. Roberge said that access to the floating dock will be from an area that is elevated 2' above the sea wall. He also noted that the fill proposed in the application involves approximately 60 cubic yards of organic growing medium for the new planting beds. He said that there would be no impact to the septic system as a result of the proposed work. The Health Department has apparently agreed with that finding.

Jeremy Ginsberg, Director of Planning, indicated that the plans have been referred to the Connecticut Department of Environmental Protection and they have chosen not to comment on the application. There being no further comments or questions from the Commission members and no comments from the public, the following motion was made: That the Commission close the Public Hearing regarding this matter. The motion was made by Mr. Kenny, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti read the following agenda item:

Coastal Site Plan Review #183, Flood Damage Prevention Application #194, Sara Ann Bassler, 13 Seagate Road Proposing to replace an existing deck with a new deck and stairs and perform related site development activities within regulated areas. The subject property is on the south side of Seagate Road approximately 350 feet south of its intersection with Boston Post Road, and is shown on Tax Assessor's Map #53, as Lot #51 in the R-1/2 Zone.

Mr. & Mrs. Bassler explained that they are proposing to replace the existing deck with a slightly larger and reconfigured deck structure. They have had the deck designed so that it will withstand the flood forces. The new deck will have approximately 142 additional square feet compared to the old deck. The angles of the new deck will be slightly different and the shape has been revised to take better advantage of the view toward Holly Pond.

There were no questions from the public regarding the application. The Commission members reviewed the plans and drawings to better understand the design of the proposed deck. The following motion was made: That the Commission close the Public Hearing regarding this application. This motion was made by Mr. Spain, seconded by Mr. Kenny and unanimously approved.

Chairman Damanti read the following agenda item:

Amendment of Land Filling Application #53-A, Guerrera Construction Company, 80 High School Lane. Proposal for an amendment of the existing Special Permit to allow the periodic use of a portable recycling plant (crusher) to process existing material on-site. Subject property is located on the north side of High School Lane approximately 1200 feet west of its intersection with Middlesex Road, and is shown on Tax Assessor's Map #9 as Lots #80 and #81, R-2 Zone.

Mr. Martin of Guerrera Construction explained that the high school construction is on an accelerated schedule and that they are continuing to work on the foundations of the building. They use material excavated from the site that is back fill around the foundations and to form the base of the new parking areas. He said that material excavated from the site is not suitable for fill material unless it

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is processed. Much of the stone must be crushed in order to be properly processed. He said that they obtained permission from the Commission to operate the crusher in the spring of 2003. During the operations of the crusher, they carefully monitor the sound and dust emissions. Mr. Martin noted that they had submitted copies of that information to the Commission with the current application. This application is to operate the crusher on four more occasions starting in June/July of 2003, and then several additional times when fill material is needed and near the end of the project.

Mr. Ginsberg said that he spoke with neighbors during the spring 2003 rock crushing operations. The complaint of the neighbors was that work was starting too early in the morning, but a closer examination of the activities indicates that the crushing process was not starting too early, it was other machinery on the property that was starting earlier than it was supposed to.

Mr. Martin explained that the rock crushing equipment was actually relocated so that it would be 200' farther to the east than originally intended. This allowed the crusher to be closer to the center of the site and farther from the neighboring properties. He said that the sound decibel reports are in the application files and there was apparent problem created by the noise of the generator.

It was noted that representatives of the general contractor and representatives of the High School Building Committee were not present. Mr. Kenny said that the High School Building Committee should be the applicant in any subsequent applications. There were no comments or questions from the public regarding the application. The following motion was made: That the Commission close the Public Hearing regarding this application. The motion was made by Mr. Kenny, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #92-A, Nancy C. Hooper, 51 Old Farm Road. Proposing to install a swimming pool and to place fill and regrade a portion of the property and perform related site development activities. The subject property is on the west side of Old Farm Road, approximately 250 feet north of its intersection with Searles Road, and is shown on Tax Assessor's Map #66, as Lot #97, in the R-1/2 Zone.

Attorney Wilder Gleason represented the applicant and asked that the information from the previous Public Hearing about the zone line correction be incorporated into this file. Attorney Gleason said that only the southern most portion of the property is clearly in the R-1 district. He said that he believed that the rest of the property was in the R-1 Zone. Attorney Gleason referred to the 1982 map prepared by Barbee & Seymour Surveyors. This shows the majority of the property being in the R-1/2 Zone and the R-1/2 Zone extending to the westerly boundary line. He said that on the 1982 map, the house is smaller than it is today and if the R-1 Zone was anywhere near the house then the additions that have been added to the house would have needed variances. It is clear to him that the R-1/2 Zone setback requirements had applied when the additions were constructed to the house. He submitted a copy of the 1982 survey.

Craig Stuart of Stuart Design Associates said that he designed the swimming pool and regrading of the backyard. He said that when he prepared a January 2003 map illustrating the proposed swimming pool and site development activities, it was he who added the zone boundary line through the western portion of the Hooper site. He said he located the zone boundary line 300 feet to the west of the Old Farm Road

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right-of-way because that is what he thought the proper location was. He said that it was his map that was submitted to the Zoning Board of Appeals.

Attorney Wilder Gleason said that Mr. Stuart's map was part of the previous application, Calendar No. 5-2003 submitted to the Zoning Board of Appeals. Mr. Gleason asked that the ZBA file be admitted as part of the Planning and Zoning Commission record. He said that when the Hoopers purchased the property in 1998, there was a Certificate of Occupancy for the additions, and there was no previous Zoning Board of Appeals variance in the files. Attorney Gleason submitted a copy of the deed and a portion of the Tax Assessor's map.

Attorney Gleason explained that the proposed regrading is part of the swimming pool project. It includes construction of a four-foot high retaining wall between the proposed pool and the rear property line. There would be landscaping installed between the pool and the rear property line to serve as a buffer between the pool and the activities at the proposed patio and the common driveway near the rear property line. He noted that the driveway is not a street as defined by the Zoning Regulations.

Mr. Stuart reviewed the plans and noted that there would be a proposed swimming pool and spa and a nice terrace that he has designed to coincide with the existing land form. He said that the spa would cascade downhill into the proposed pool. He showed cross-section drawings to illustrate the grading involved. He said that approximately 27 cubic yards of material needed to be brought into the site. Much of the regrading would be accomplished utilizing the material excavated from the swimming pool and spa locations. He said that a safety fence would be installed to surround the swimming pool as required by the Building Code. Mr. Stuart said that flowering shrubs and trees would be planted between the pool/terrace area and the rear property line.

Attorney Wilder Gleason said that a very large beech tree (which is improperly labeled as a birch tree on the map) is in the front yard. He said that there would be no increase in storm water runoff and referred to the letter from the project engineer. He said the surface water would be directed to a storm water drywell, and then any overflow from that drywell would flow westerly as it currently would.

John Gardiner of 45R Old Farm Road said that the Hooper residence is located in the R-½ zone and that is why the setbacks for the R-½ zone were applied when the addition was constructed several years ago. He said that no part of the house went into the R-1 zone. Mr. Gardner said that the common driveway or lane is the access way for three houses. He said that the pool would encroach toward that common driveway and would have an unacceptable impact on the neighbors.

Attorney Wilder Gleason read from Section 315 of the Zoning Regulations because it addresses a question of lots in more than one zone. He read aloud the provision of the regulations that indicates that the less restrictive zoning regulations will not apply to the more restrictive zone.

Jeff McDougal, land surveyor of William Seymour and Associates, said that the R-1 setback requirement from the rear property line is 40 feet. He said that if it is applied from the rear line then it would extend into the R-½ zone. Commission members reviewed Section 314, subsections A through F. Attorney Gleason reminded the Commission members that this property is 1.26 acres and therefore it is much larger than the minimum lot requirement of the R-½ zone.

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Zoning Enforcement Officer David Keating raised questions about the storm water drainage system. He suggested that the storm water drainage swale be deepened to make sure that it would function properly or that it be replaced with underground pipes. He also noted that anytime a swimming pool is within 25 feet of a property line there must be a solid six foot high fence or solid evergreen landscaping between the pool and the property line. In this case, the proposed 4 foot high fence to comply with the building code safety requirements would not comply with the zoning regulation requirement for a six foot high fence. The project designers indicated that they would re-examine the storm drainage situation and would revise the fencing and landscaping plans to comply with the regulations.

There being no further comments or questions the following motion was made: that the Commission close the public hearing regarding this application. The motion was made by Mrs. Forman, seconded by Mr. Kenny and unanimously approved. Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #98, Keith & Donna Gallo, 103 Hoyt Street. Proposing to terrace and regrade the rear yard of the property and perform related site development activities. The subject property is on the east side of Hoyt Street, approximately 320 feet north of its intersection with Miller Road, and is shown on Tax Assessor's Map #29, as Lot #44, in the R-1/2 Zone.

Keith Gallo explained that the current application involves slight regrading of the property within 15 feet of the property line. This will help to address an existing storm water drainage problem. He referred to the site plan prepared by the engineer. He has already received approval from the Environmental Protection Commission for the project. He said that the engineer has verified that there will be a decrease in the velocity of the storm water flow by changing the grading as proposed.

The Commission members reviewed the plan. There were no comments, questions, or letters from the neighbors. The following motion was made: that the Commission close the public hearing regarding this application. The motion was made by Mr. Bigelow, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #99, Brad & Serena Bowman, 83 Buttonwood Lane. Proposing to regrade the existing sloped lawn and create a more level area on the east side of the house and perform related site development activities. The subject property is located on the north side of Buttonwood Lane approximately 250 feet east of its intersection with Mansfield Avenue and is shown on Tax Assessor's Map #5 as Lot #2, R-1 Zone.

Sarah Ungemack McCool, of McCool Landscape Architects, explained that the house was constructed in 2001 and during the construction of the house the grade was raised around its eastern end. The house was purchased by the current owners subsequent to the original construction. The current owners wish to finish the space in the basement and have a walk out basement. To accomplish this, they need to remove some of the fill around the easterly side of the house. Since some of this work is within 50 feet of the adjacent watercourse, they have already obtained approval from the Environmental Protection Commission. Mrs. McCool explained that there would be no change to the storm water runoff volume

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or direct or pattern. The only change involves removing fill so that a walk out basement can be achieved.

There were no comments or questions from the neighbors. The following motion was made: that the Commission close the public hearing regarding this matter. The motion was made by Mrs. Forman, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti called the general meeting to order at 10:30 p.m. He read the following agenda item:

GENERAL MEETING

Any other Business (requires two-thirds vote of Commission)

Mr. Ginsberg explained that he had two items of minor business that he asked the Commission to consider. They included the Sandoval's business at 35 Boston Post Road and the Osinski property at 17 Tokeneke Trail. The following motion was made: that the Commission consider these two items under other business. The motion was made by Mr. Spain, seconded by Mrs. Forman and unanimously approved.

Sandoval's, 35 Boston Post Road. Mr. Ginsberg explained that Mr. Sandoval's business has been operated as a used car dealership by Mr. Sandoval, and an automobile repair facility by a tenant of the site. There have been two separate businesses operated there. The tenant is leaving and Mr. Sandoval proposes to eliminate the separate car repair business. The only physical change will be a slight revision of the floor plan. Mr. Ginsberg reminded the Commission that overflow parking from the car sales and repair businesses has been authorized to extend into the Carvel site because Mr. Sandoval also owns that property. The Commission members reviewed the letter and concluded that no formal Planning and Zoning Commission action would be necessary because the only change would be the elimination of a tenant who currently operates an automobile repair business. The Commission authorized the staff to work with the owner and operator of the business to document the modifications.

Osinski, 17 Tokeneke Trail. Mr. Ginsberg explained that Mr. Osinski has obtained a Connecticut Department of Environmental Protection approval to replace a dock in Scott's Cove. He said that there would be no changes on the landward side of the mean high water line. The Commission members discussed the situation and concluded that there was no need for a Planning & Zoning Commission application or any formal action by the Commission.

There being no pending litigation, the meeting was adjourned at 10:55 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning